



Contribution to State Aid Issue Paper

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Introduction

FERA would like to thank the European Commission for the opportunity to express our views on the Issue Paper on Assessing State Aid for Film and other Audiovisual Works - a subject of great importance to our members.

The Federation of European Film Directors is a non-profit organization of 39 national film and television directors' guilds and associations, across 29 European countries. Since being founded in Venice, Italy, in 1980, FERA has focused on promoting policies that maximize the creative, social and commercial potential of the audiovisual industry. FERA is a strong advocate for freedom of expression and media pluralism, and represents the independent voice of directors as the primary creators of audiovisual works. The director, as the creative decision-maker in a collaborative artistic process, has the final responsibility for the aesthetic cohesion and artistic integrity of the work. FERA defends the creative and economic rights of the director, as essential to the diversity of European audiovisual culture.

Is there a need for change?

Creating audiovisual works will always be inherently high-risk. Projects must be developed without any certainty of entering into production, and once produced each film is a new prototype with an unpredictable and idiosyncratic life-span. Funding must be raised from a variety of sources. State aid facilitates the access to private funding, and is normally the key factor in getting small European films made, by helping to reduce the considerable risk for the producer and other investors at a crucial stage in getting the project off the ground.

Today the market faces many challenges, such as rampant online piracy and still nascent online distribution services which do not compensate for the contraction of the physical video market experienced in recent years. There is also a troubling trend among TV companies, in particular

public service broadcasters, to allocate less (prime) time and resources to high-quality film and television productions.

As far as our experience goes the current Cinema Communication functions well, so to the members of FERA, major changes are not needed. However, in the following we will answer the main topics in the Issue Paper as far as we are ready to at the present time:

I. The objective of state aid for films and audiovisual works

The Issue Paper points out that building audiences for European films, ensuring the cultural diversity of content and stimulating innovation, openness and creativity are present in many funding schemes. FERA supports these aims and would like to add that European audiences should always have a European choice – in all genres, and for all age groups. This means that supporting “commercial” European films is just as important as supporting innovative European films. The political will, in audiences and politicians to support public funding of audiovisual works also depends on the availability of a good proportion of popular films to a large public. Measuring the fulfillment of the objective must be done using quantitative as well as qualitative parameters. Festival prizes and cinema admissions can only convey a partial answer.

Section 23 of the Issues Paper states that “Europe’s national, regional and local film funds do not appear to have a common objective or strategy”. It is a reality that funding schemes on national, regional and local levels may apply different sets of selection criteria. However, this situation does not lead to a “contradictory funding” situation, but rather a healthy diversity in funding alternatives – provided that each is allowed to fund to a sufficient level (or intensity) so that realisation of the project is not dependent on support from all at the same time.

II. The “subsidy race”

In our experience the European film industry benefits financially and artistically from attracting external productions. Especially for countries with a low production capacity, foreign productions ensure continuity for local crew and contributes to cost-effective investment in and use of state-of-the-art production facilities and equipment.

There is currently an obligation for Member States to assess the cultural content of the works supported on the basis of verifiable national criteria, the “cultural test”. It is FERA’s opinion that this helps ensure that public support mechanisms for film and TV production really contribute to the public policy objective of long-term sustainability of the national audiovisual industry, because a critical mass of projects contribute to the continued growth of professionals through practise and experience.

The choice to bring a film production to another country depends not only on financial incentives, but equally on the requirements of the script, such as specific locations and natural landscapes, the quality of the facilities offered by the country and the skills of the local crew.

Any spending by foreign productions will in most cases be greater than the rebate they receive, and this funding (which is usually motivated by additional governmental objectives such as increasing tourism), would in most cases not have been given to the national audiovisual industry.

Tax incentives help to secure the position of Europe as a creative hub in a highly competitive global media market, and to abolish them would not mean that Hollywood productions stay at home, but that they go to other continents, such as Asia.

The tax incentives currently available to foreign productions are in some cases also extended to national productions, and this should be encouraged and developed further.

On the question of setting limits to tax schemes, the Issue Papers suggests “One possibility could be to limit aid for a single production to a certain amount, assuming that films with very high budgets can obtain the necessary upfront financing commercially. Another possibility could be to insist in addition that all aid, or at least aid beyond this threshold, is granted on condition that it is reinvested or reimbursed in case the production makes a profit”.

FERA is in favour of the second suggestion in particular, and would like to see some portion of the profits from a tax incentive supported film be retained in the producing country. We urge the Commission to conduct a detailed study of the existing schemes to identify best practices and examine the potential impact of such limitations.

III. The scope of the Communication

FERA agrees that it is appropriate to extend the scope of the Cinema Communication to include all aspects from story concept to delivery to audience. The Issue Paper points out that some Member States already offer support for activities other than film and audiovisual production, including script-writing, development, film distribution, film promotion, film festivals, training, developing film culture, film conservation and archiving. These types of support should be formally covered by the new Cinema Communication, in order to increase legal certainty regarding the support for such activities under Article 107(3)(d) TFEU.

What factors should be taken into account by State aid assessment criteria for activities other than production?

The extent to which audiences can access European audiovisual works will affect their view of the success of public support schemes. Access is partly a question of cinema programming, and partly of the visibility given to European works by a broadcaster, online service or a film festival. These and other similar factors must therefore be taken into account. To be fully successful, state aid should be targeted at all these players and include obligations to promote European audiovisual works.

How should the switch of cinemas to digital projection be covered by future rules on aid to cinema?

The modes of financing applied at national level are not uniform and are adapted to the national context. American studios are eager to invest in digitisation of cinemas in return for programming obligations, to the detriment of European films. State aid can be an important factor in retaining control of our screens. The new Cinema Communication should provide the necessary flexibility so that Member States can reduce the transition period and complete digitisation of their cinemas.

Should the scope of the Communication extend beyond films and TV productions to other types of audiovisual projects? If so, what definition of 'audiovisual project' should be used?

FERA believes that the Commission could consider including creative works whose basic production and distribution models share the same characteristics as film and television productions.

The European Commission should consider a separate Communication for video games, a sector whose business model is different from the film and TV sector. Cross-media productions tend to be either purely commercial products or a sub-category of visual arts and are therefore either outside the scope of state aid or financed by other types of support schemes (individual stipends below de minimis amounts).

IV. The intensity of state aid

The current maximum aid intensity of 50 % of the production budget with increased rates for difficult and low budget films has proved sensible and well-adapted to the needs of the sector itself and should therefore not be revised, especially not downwards.

Higher aid intensities for difficult and low budget films are crucial to mitigate insurmountable funding challenges for some feature films, and most documentary films, animation films and short films.

Other activities

If other activities are covered by the new Cinema Communication, it would not be appropriate to set the maximum overall aid intensity as 50% of the total project budget (covering script-writing, development, pre-production, principal photography, post-production, distribution, promotion and marketing costs). FERA recommends stipulating a maximum aid intensity for each activity.

Some of these activities may require higher intensity, and some activities may be carried out by creative individuals rather than production companies, such as scriptwriting and development. In these stages private or non-state funders are rarely ready to invest in the project, therefore direct funding (up to 100%) for writers/directors without any production company attached must be made possible.

Co-productions

Considering the positive effects of co-producing both in terms of cultural diversity and circulation of the works, FERA would welcome a higher overall intensity of the aid for co-productions of 60 %.

V. Territorial conditions

The 2001 Cinema Communication noted that some territorial conditions "may be necessary to ensure the continued presence of the human skills and technical expertise required for cultural creation.

FERA believes this is just as relevant today and advocates maintaining the present conditions on national spending in the future Cinema Communication. The "Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of State aid schemes for films and audio-visual productions" provides no evidence that a revision would result in more efficiency in the market for film and TV productions. Nor is there evidence that the intensity of current territorial requirements is such as to generate distortion of competition within the EU market.

There is no standardisation or assembly-line logic in film production. Every crew member has a precise role to fulfill in realizing the artistic vision of the film. Many filmmakers want to work with the crews, laboratory technicians and editors with whom they have worked in the past and on whose skills they have come to rely on to interpret their creative intentions. Working abroad with unfamiliar crews and post-production technicians is deemed risky in this respect.

Most European films and TV programmes are produced on home ground due to factors that are not primarily economic, but creative and/or cultural. A majority of stories require local actors and locations (European filmmakers make less use of studios and sound stages than their American and international counterparts).

20% of Europe's audiovisual public funding (tax incentives not included) comes from the regions. Changes to territorialisation would mean that less funding will be available for the creation of cultural products, not only in the region where direct sources of finance are affected, but throughout Europe.

By taking away a key rationale for Member States' support to film production, it would destroy a sector that is acutely vulnerable to market failure. It would result in some countries and regions no longer being able to maintain a critical mass of activities to preserve skills and infrastructure to produce their own audiovisual works reflecting national and regional culture.

VI. The digital revolution

The industry has undergone format and distribution changes before. The core challenges remain the same. Digital production equipment does not significantly reduce the number of crew or time needed to produce a film. Distribution support (on all platforms) and sufficient marketing and promotion resources are still essential to find an audience both offline and online.

The audiovisual sector must be allowed reasonable time to make the digital transition and adopt new sustainable business models. State aid rules are designed to alleviate market failure, not expropriate intellectual property rights. With caps on state aid intensity, which is very challenging in times of financial crisis, film producers must find private investors and this would be impossible if there was no prospect to recoup the investment. It is in the interest of filmmakers, audiences and public institutions alike that films are seen by the widest possible audience. Rights holders must be free to choose the best suited licensing model in order to achieve this. It is entirely inappropriate to suggest imposing the "Creative Commons" license on works that, precisely due to only partial public support, require a significant amount of private funding.

The Internet and online distribution make physical distribution across borders possible but they do not automatically create new audiences for audiovisual content. Online distribution is not merely a potential future revenue stream for rights holders. On the contrary, new distribution channels such as online delivery of film should contribute to the advance financing of films in a manner similar to that already provided by the pre-sale of rights to theatrical, DVD and television distributors. This is a strategic necessity in order to ensure new production and the widest possible choice for the audiences.

The new Cinema Communication should be flexible enough to allow transition support to development of innovative business models, training and seed money for pilot projects.

Today several national funding bodies have rules on deposits of a master copy of the work. FERA supports mandatory deposits for archive and preservation purposes. Any cultural/educational use of such productions are adequately governed by the existing exceptions and limitations to copyright and do not belong in the context of the Cinema Communication.

In conclusion

The Issue Paper seems to conclude that additional regulation in the field of the audiovisual sector would maximize the impact of state aid. FERA would not agree. The digital revolution offers both great opportunities and challenges. European audiovisual works can reach new global audiences if the optimal conditions are put in place in the form of incentives.

We regret that the Issue Paper's assumptions on European "over-production" not matching "supply and demand" fail to take into account the vastly superior production and marketing resources and sheer industrial muscle that the American film industry enjoys. State aid can and should serve the function of levelling the playing field for European audiovisual works and improve their competitiveness – on our own continent and beyond.

We urge the Commission to undertake an in-depth study of the cultural, economic and social consequences of any changes considered in the coming Cinema Communication before reaching a final decision.

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